2. Supplemental Matter: Additional Convention Call Resolutions.

Since the filing of the Petition for Certiorari herein it has come to the attention of petitioners that another movement to seek a National Constitutional Convention has developed, arising out of recommendations approved by the annual meeting of the National Legislative Conference, sponsored by the Council of State Governments. At its annual meeting in Salt Lake City, August 25-28, 1970, the Conference adopted a recommendation urging state legislatures to petition Congress to call a national constitutional convention for the purpose of proposing a constitutional amendment requiring federal revenues to be shared with state and local governments. "Lawmakers Urge Revenue Sharing Amendment," 13 State Government News, No. 10, page 7 (October 1970).

On January 5, 1971, a resolution seeking a convention, House Resolution No. 1, was introduced in The General Assembly of Pennsylvania and referred to the House Committee on Rules. The text of that resolution is attached as an appendix hereto.

The prospect of adoption of such resolutions lends additional significance to the Petition for Certiorari herein, because of the uncertainty that prevails among scholars and in Congress concerning the effect of convention call resolutions ostensibly adopted for different purposes. The view generally favored is that reflected in Bonfield, The Dirksen Amendment and the Article V Convention Process, 66 Mich. L. Rev. 949, 970 (March 1968): "such a convention could lawfully be convened only when there are a sufficient number of proper applications requesting a convention to solve the same problem or deal with the same issue." (Emphasis in original.) See generally Hearings on S. 2307 Before the Subcomm. on Separation of Powers of the Senate Comm. on the Judiciary, 90th Cong., 1st Sess., "Federal Constitutional Convention," particularly pages 74-75 (testimony of Prof. Bickel); 110, 120-121 (American Enterprise Institute, "A Convention To Amend The Constitution?"). But the absence of any authoritative determination of the issue gives good reason for concern about opinions that petitions proposing conventions for different substantive purposes may be

cumulated to meet the two-thirds requirement of Article V. See Small, "Procedures for Amending the United States Constitution," (Library of Congress Legislative Reference Service), Id. at 104, 105-07. Professor Kauper has commented that the constitutional language is ambiguous on the question whether Congress "must take account only of applications for a convention to deal with specific subject matters . . . . " Kauper, The Alternative Amendment Process: Some Observations," 66 Mich. L. Rev. 903, 910-11 (March 1968). And the uncertainty concerning Congress' power to limit the scope of amendments considered in Convention, Bickel, id. at 73-78, Bonfield, supra, 66 Mich. Law Rev. at 992-98, invites the same conclusion with respect to cumulating state resolutions. Thus, because no authoritative construction of Article V assures that applications on different subjects may not be cumulated, the prospect of new convention call resolutions proposing a "revenue sharing" amendment threatens a new constitutional crisis. No convention call crisis should be permitted

to arise because of the pending petitions by malapportioned legislatures seeking an apportionment amendment.

In connection with the above matters, petitioner calls this Court's attention to the apparent attempt by the state of Kansas to withdraw or rescind its resolution petitioning Congress to call a constitutional convention on the subject of apportionment. See the text of the rescinding resolution entered in the Congressional Record. 116 Cong. Rec., page S5671 (Apr. 14, 1970). As with the above matters, it is uncertain whether the States may effectively withdraw or rescind convention-call resolutions, though the better view is that they may. See Bonfield, supra, 66 Mich. L. Rev. at 966-67 and authorities cited.

Respectfully submitted,

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January 18, 1971

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE RESOLUTION
No. 1 Session of 1971

INTRODUCED BY MESSRS. FINEMAN, IRVIS, PRENDERGAST, ENGLEHART, WARGO, LEE, FOX, SELTZER, MILLER, BUTERA, RYAN, HEPFORD AND GREENFIELD, JANUARY 5, 1971

REFERRED TO COMMITTEE ON RULES, JANUARY 5, 1971

In the House of Representatives, January 5, 1971

WHEREAS, A resolution of our nation's myriad and diverse problems is contingent upon a viable partnership between the federal government and strengthened state governments; and

WHEREAS, The federal government, by its extensive reliance on the graduated income tax as a revenue source, has virtually pre-empted the use of this source from state and local governments, thereby creating a disabling fiscal imbalance between the federal government and the state and local governments; and

WHEREAS, Increasing demands upon state and local governments for essential public services have compelled the states to rely heavily on highly regressive and inelastic consumer taxes and property taxes; and

WHEREAS, Federal revenues based predominantly on income taxes increase significantly faster than economic growth, while state and local revenues based heavily on sales

and property taxes do not keep pace with economic growth; and

WHEREAS, The fiscal crisis at state and local levels has become the overriding problem of intergovernmental relations and of continuing a viable federal system; and

WHEREAS, The evident solution to this problem is a meaningful sharing of federal income tax resources; and

WHEREAS, The United States Congress, despite the immediate and imperative need therefor, has failed to enact acceptable revenue sharing legislation; and

WHEREAS, In the event of such Congressional inaction, Article V of the Constitution of the United States grants to the states the right to initiate constitutional change by applications from the Legislatures of two-thirds of the several states to the Congress, calling for a constitutional convention; and

WHEREAS, The Congress of the United States is required by the Constitution to call such a convention upon the receipt of applications from the Legislatures of two-thirds of the several states; therefore be it

RESOLVED (the Senate concurring), That the General Assembly of the State of Pennsylvania, pursuant to Article V of the Constitution of the United States, does hereby make application to the Congress of the United States to call a convention for the sole and exclusive purpose of proposing to the several states a constitutional amendment which shall provide that a portion of the taxes on income levied by Congress pursuant to the sixteenth amendment of the Constitution of the United States shall be made available

each year to state governments and political subdivisions thereof, by means of direct allocation, tax credits, or both, without limiting directly or indirectly the use of such moneys for any purpose not inconsistent with any other provision of the Constitution of the United States; and be it further

RESOLVED, That this application shall constitute a continuing application for such convention pursuant to Article V until the Legislatures of two-thirds of the states shall have made like applications and such convention shall have been called by the Congress of the United States unless previously rescinded by this General Assembly; and be it further

RESOLVED, That certified copies of this resolution be presented forthwith to the President of the Senate of the United States and the Speaker of the House of Representatives of the United States and to each Member of the Congress from this State and to the Legislatures of each of the several states attesting the adoption of this resolution by the General Assembly of the State of Pennsylvania.